

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SHARIANNE JOHN; MICHAEL
JOHN, on behalf of themselves and all
others similarly situated;

Plaintiffs,

vs.

ALLY FINANCIAL, INC., a Delaware
corporation, and DOES 1 through 100
inclusive;

Defendants.

Case No.: LA CV11-6757 JAK (MRWx)

~~[PROPOSED]~~ PROTECTIVE ORDER

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production
3 of confidential, proprietary, or private information for which special protection from
4 public disclosure and from use for any purpose other than prosecuting this litigation
5 would be warranted. Accordingly, the parties hereby stipulate to and petition the
6 court to enter the following Stipulated Protective Order. The parties acknowledge
7 that this Order does not confer blanket protections on all disclosures or responses to
8 discovery and that the protection it affords extends only to the limited information or
9 items that are entitled under the applicable legal principles to treatment as
10 confidential. The parties further acknowledge, as set forth in Section 11, below, that
11 this Stipulated Protective Order creates no entitlement to file confidential information
12 under seal; Local Rule 79-5 sets forth the procedures that must be followed and
13 reflects the standards that will be applied when a party seeks permission from the
14 court to file material under seal.

15 2. DEFINITIONS

16 2.1. Party: Any party to this action, including all of its officers, directors,
17 employees, consultants, retained experts, and outside counsel (and their support
18 staff).

19 2.2. Disclosure or Discovery Material: All items or information, regardless
20 of the medium or manner generated, stored, or maintained (including, among other
21 things, testimony, transcripts, or tangible things) that are produced or generated in
22 disclosures or responses to discovery in this matter.

23 2.3. "Confidential" Information or Items: Information (regardless of how
24 generated, stored or maintained) or tangible things that qualify for protection under
25 standards developed under F.R.Civ.P. 26(c).

26 2.4. "Highly Confidential-Attorneys' Eyes Only" Information or Items:
27 Extremely sensitive "Confidential Information or Items" whose disclosure to another
28

1 Party or nonparty would create a substantial risk of serious injury that could not be
2 avoided by less restrictive means.

3 2.5. Receiving Party: A Party that receives Disclosure or Discovery Material
4 from a Producing Party.

5 2.6. Producing Party: A Party or non party that produces Disclosure or
6 Discovery Material in this action.

7 2.7. Designating Party: A Party or non party that designates information or
8 items that it produces in disclosures or in responses to discovery as "Confidential" or
9 "Highly Confidential Attorneys' Eyes Only."

10 2.8. Protected Material: Any Disclosure or Discovery Material that is
11 designated as "Confidential" or as "Highly Confidential - Attorneys' Eyes Only."

12 2.9. Outside Counsel: Attorneys who are not employees of a Party but who
13 are retained to represent or advise a Party in this action.

14 2.10. House Counsel: Attorneys who are employees of a Party.

15 2.11. Counsel (without qualifier): Outside Counsel and House Counsel (as
16 well as their support staffs).

17 2.12. Expert: A person with specialized knowledge or experience in a matter
18 pertinent to the litigation who has been retained by a Party or its counsel to serve as
19 an expert witness or as a consultant in this action and who is not a past or a current
20 employee of a Party or of a competitor of a Party's and who, at the time of retention,
21 is not anticipated to become an employee of a Party or a competitor of a Party's.
22 This definition includes a professional jury or trial consultant retained 'in connection
23 with this litigation.

24 2.13. Professional Vendors: Persons or entities that provide litigation support
25 services (e.g., photocopying; videotaping; translating; preparing exhibits or
26 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and
27 their employees and subcontractors.

28

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only
 3 Protected Material (as defined above), but also any information copied or extracted
 4 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus
 5 testimony, conversations, or presentations by parties or counsel to or in court or in
 6 other settings that might reveal Protected Material.

7 4. DURATION

8 Even after the termination of this litigation, the confidentiality obligations
 9 imposed by this Order shall remain in effect until a Designating Party agrees
 10 otherwise in writing or a court order otherwise directs.

11 5. DESIGNATING PROTECTED MATERIAL

12 5.1. Exercise of Restraint and Care in Designating Material for Protection.

13 Each Party or non party that designates information or items for protection under this
 14 Order must take reasonable care to limit any such designation to material that
 15 qualifies under the appropriate standards. A Designating Party may not designate as
 16 confidential any information which already has been made public and may only
 17 designate information which the Designating Party in good faith believes will, if
 18 disclosed, have the effect of causing harm to its competitive position or otherwise
 19 impinge upon such Designating Party's right to privacy.

20 If it comes to a Party's or a non party's attention that information or items that
 21 it designated for protection do not qualify for protection at all, or do not qualify for
 22 the level of protection initially asserted, that Party or non-party must promptly notify
 23 all other parties that it is withdrawing the mistaken designation.

24 5.2. Manner and Timing of Designations. Except as otherwise provided in
 25 this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise
 26 stipulated or ordered, material that qualifies for protection under this Order must be
 27 clearly so designated before the material is disclosed or produced.

28 Designation in conformity with this Order requires:

1 (a) for information in documentary form (apart from transcripts of
2 depositions or other pretrial or trial proceedings), that the Producing Party affix the
3 legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
4 ONLY" at the top or bottom of each page that contains protected material. As to
5 electronic material where such manner of designation is impractical, the Designating
6 Party shall designate the Protected Materials in a reasonable manner in the spirit of
7 this Order.

8 A Party or non-party that makes original documents or materials
9 available for inspection need not designate them for protection until after the
10 inspecting Party has indicated which material it would like copied and produced.
11 During the inspection and before the designation, all of the material made available
12 for inspection shall be deemed "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
13 ONLY." After the inspecting Party has identified the documents it wants copied and
14 produced, the Producing Party must determine which documents, or portions thereof,
15 qualify for protection under this Order, then, before producing the specified
16 documents, the Producing Party must affix the appropriate legend
17 ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
18 ONLY") at the top or bottom of each page that contains Protected Material.

19 (b) for testimony given in deposition, that the Party or non-party
20 offering or sponsoring the testimony identify on the record, before the close of the
21 deposition, all protected testimony, and further specify any portions of the testimony
22 that qualify as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -
23 ATTORNEYS' EYES ONLY." When it is impractical to identify separately each
24 portion of testimony that is entitled to protection, and when it appears that substantial
25 portions of the testimony may qualify for protection, the Party or non party that
26 sponsors, offers, or gives the testimony may invoke on the record (before the
27 deposition is concluded) a right to have up to 10 days after receiving the final
28 transcript to identify the specific portions of the testimony as to which protection is

1 sought and to specify the level of protection being asserted (“CONFIDENTIAL” or
2 “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”). Only those portions
3 of the testimony that are appropriately designated for protection within the 10 days
4 after receiving the final transcript shall be covered by the provisions of this
5 Stipulated Protective Order. Alternatively, the entire deposition transcript may be
6 designated as protected testimony, upon the agreement of all Parties attending the
7 deposition.

8 Transcript pages containing Protected Material must be separately
9 bound by the court reporter, who must affix to the top of each such page the legend
10 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES
11 ONLY,” as instructed by the Party or non-party offering or sponsoring the witness or
12 presenting the testimony.

13 (c) for information produced in some form other than documentary,
14 and for any other tangible items, that the Producing Party affix in a prominent place
15 on the exterior of the container or containers in which the ‘information or item is
16 stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -
17 ATTORNEYS’ EYES ONLY.”

18 5.3. Inadvertent Failures to Designate. An inadvertent failure to designate
19 qualified information or items as “Confidential” or “Highly Confidential - Attorneys’
20 Eyes Only” does not, standing alone, waive the Designating Party’s right to secure
21 protection under this Order for such material. If material is appropriately designated
22 as “Confidential” or “Highly Confidential - Attorneys’ Eyes Only” after the material
23 was initially produced, the Receiving Party, on notification of the designation, must
24 make reasonable efforts to assure that the material is treated in accordance with the
25 provisions of this Order. The Producing Party must make good faith efforts to
26 ensure the designation of “Confidential” or “Highly Confidential” documents at the
27 earliest practicable time.

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1. Timing of Challenges. A Party does not waive its right to challenge a
3 confidentiality designation by electing not to mount a challenge promptly after the
4 original designation is disclosed.

5 6.2. Meet and Confer. A Party that elects to initiate a challenge to a
6 Designating Party's confidentiality designation must do so in good faith and must
7 begin the process either in writing or by conferring directly (in voice to voice
8 dialogue; other forms of communication are not sufficient) with counsel for the
9 Designating Party. The challenging Party must identify the particular documents and
10 information in question and as explain the basis for its belief that the particular
11 confidentiality designation was not proper and must give the Designating Party an
12 opportunity to review the designated material, to reconsider the circumstances, and,
13 if no change in designation is offered, to explain the basis for the chosen designation.
14 A challenging Party may proceed to the next stage of the challenge process only if it
15 has engaged in this meet and confer process first.

16 6.3. Judicial Intervention. A Party that elects to press a challenge to a
17 confidentiality designation after considering the justification offered by the
18 Designating Party may file and serve a motion or otherwise seek court intervention
19 in which it specifically identifies the challenged material and sets forth in detail the
20 basis for the challenge.

21 7. ACCESS TO AND USE OF PROTECTED MATERIAL

22 7.1. Basic Principles. A Receiving Party may use Protected Material that is
23 disclosed or produced by another Party or by a non-party in connection with this case
24 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
25 Material may be disclosed only to the categories of persons and under the conditions
26 described in this Order. When the litigation has been terminated, a Receiving Party
27 must comply with the provisions of section 12, below (FINAL DISPOSITION).
28

1 Protected Material must be stored and maintained by a Receiving Party
2 at a location and in a secure manner that ensures that access is limited to the persons
3 authorized under this Order.

4 7.2. Disclosure of "CONFIDENTIAL" Information or Items. The
5 designation of any document as "CONFIDENTIAL" shall not preclude any party
6 from showing or providing a copy of the document to any person who appears as an
7 author, addressee or recipient on the face of the document. Unless otherwise ordered
8 by the court or permitted in writing by the Designating Party, a Receiving Party may
9 disclose any information or item designated CONFIDENTIAL only to:

10 (a) the Receiving Party's Outside Counsel of record in this action, as
11 well as employees of said Counsel to whom it is reasonably necessary to disclose the
12 information for this litigation;

13 (b) the officers, directors, and employees (including House Counsel)
14 of the Receiving Party to whom disclosure is reasonably necessary for this;

15 (c) experts (as defined in this Order) of the Receiving Party to whom
16 disclosure is reasonably necessary for this litigation and who have signed the
17 "Agreement to Be Bound by Protective Order" (Exhibit A), which shall be
18 maintained at the office of counsel retaining such expert and produced to opposing
19 counsel at the conclusion of this Action;

20 (d) the Court and its personnel;

21 (e) court reporters, their staffs, and professional vendors to whom
22 disclosure is reasonably necessary for this litigation;

23 (f) any witness shown the document in a deposition in the action.

24 Pages of transcribed deposition testimony or exhibits to depositions that reveal
25 Protected Material must be separately bound by the court reporter and may not be
26 disclosed to anyone except as permitted under this Stipulated Protective Order.

27 (g) the author of the document or the original source of the
28 information.

1 7.3. Disclosure of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
 2 ONLY" Information or Items. The designation of any document as "HIGHLY
 3 CONFIDENTIAL - ATTORNEYS' EYES ONLY" shall not preclude any party from
 4 showing or providing a copy of the document to any person who appears as an author,
 5 addressee or recipient on the face of the document. Unless otherwise ordered by the
 6 court or permitted in writing by the Designating Party, a Receiving Party may
 7 disclose any information or item designated "HIGHLY CONFIDENTIAL -
 8 ATTORNEYS' EYES ONLY" only to:

9 (a) the Receiving Party's Outside Counsel of record in this action, as
 10 well as employees of said Counsel to whom it is reasonably necessary to disclose the
 11 information for this litigation;

12 (b) House Counsel of a Receiving Party (1) to whom disclosure is
 13 reasonably necessary for this litigation;

14 (c) Experts (as defined in this Order) (1) to whom disclosure is
 15 reasonably necessary for this litigation, (2) who have signed the "Agreement to Be
 16 Bound by Protective Order" (Exhibit A), which shall be maintained at the office of
 17 counsel retaining such expert and produced to opposing counsel at the conclusion of
 18 this Action;

19 (d) the Court and its personnel;

20 (e) court reporters, their staffs, and professional vendors to whom
 21 disclosure is reasonably necessary for this litigation ;

22 (f) any witness shown the document in a deposition in this litigation;
 23 and

24 (g) the author of the document or the original source of the
 25 information.

26 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
 27 OTHER LITIGATION.

1 If a Receiving Party is served with a subpoena or an order issued in other
2 litigation that would compel disclosure of any information or items designated in this
3 action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS'
4 EYES ONLY," the Receiving Party must so notify the Designating Party, in writing
5 (by fax, if possible) immediately and in no event more than seven court days after
6 receiving the subpoena or order. Such notification must include a copy of the
7 subpoena or court order. The Receiving Party should not produce any designated
8 material in response to the subpoena or order until the date specified for production
9 in the subpoena. The Receiving Party must also notify the interested party to the
10 existence of the Protective Order and the contact information for the Designating
11 Party.

12 The purpose of imposing these duties is to alert the interested parties to the
13 existence of this Protective Order and to afford the Designating Party in this case an
14 opportunity to try to protect its confidentiality interests in the court from which the
15 subpoena or order issued.

16 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

17 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
18 Protected Material to any person or in any circumstance not authorized under this
19 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
20 writing the Designating Party of the unauthorized disclosures and the specific facts of
21 how, when and in what manner the unauthorized disclosure occurred, (b) use its best
22 efforts to retrieve all copies of the Protected Material, (c) inform the person or persons
23 to whom unauthorized disclosures were made of all the terms of this Order, (d) request
24 such person or persons to execute the "Acknowledgment and Agreement to Be
25 Bound" that is attached hereto as Exhibit A and (e) fully cooperate with the
26 Designating Party in its independent efforts to mitigate the consequences of the
27 unauthorized disclosure.

10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

11. PROCEDURES FOR FILING PROTECTED MATERIAL UNDER SEAL

Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5 is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

12. FINAL DISPOSITION.

Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after the final termination of this action, each Receiving Party must return all Protected Material to the Producing Party. As used in this subdivision, "all

Protected Material” includes all copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of the Protected Material. With permission in writing from the Designating Party, the Receiving Party may destroy some or all of the Protected Material instead of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty-day deadline that identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

13. MISCELLANEOUS

13.1. Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

13.2. Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence any of the material covered by this Protective Order.

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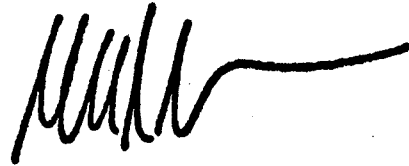
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1 13.3. The Parties and their counsel agree that, in the event that the Court does
2 not enter the Order approving this Stipulation, this Stipulation shall remain in effect
3 and enforceable between the Parties unless and until superseded by further
4 stipulation or order.

5 **IT IS SO ORDERED.**

6 DATED: January 26, 2012



Honorable Michael R. Wilner
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare
 under penalty of perjury that I have read in its entirety and understand the Stipulated
 Protective Order that was issued by the United States District Court for the Central
 District of California on _____ [date] in the case of *John v Ally*, Case No. LA
 CV 11-6757 JAK (MRWx). I agree to comply with and to be bound by all the terms of
 this Stipulated Protective Order and I understand and acknowledge that failure to so
 comply could expose me to sanctions and punishment in the nature of contempt. I
 solemnly promise that I will not disclose in any manner any information or item that
 is subject to this Stipulated Protective Order to any person or entity except in strict
 compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the Central District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or
 type full address and telephone number] as my California agent for service of
 process in connection with this action or any proceedings related to enforcement of
 this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

[printed name]

Signature: _____

[signature]